SUBJECT INDEX

	Page
Petition for Writ of Certiorari	1
Opinion Below	2
Jurisdiction	3
Questions Presented for Review	4
Constitutions Involved	6
Statutes Involved	8
Statement of the Case	8
Reasons for Granting the Writ	11
Conclusion	14

APPENDIX

Appendix A:

Journal Entry of Orders and Judgment District Court, Tulsa County ____ i-ii

Appendix B:

Judgment, District Court, Oklahoma County ____ ii-v

Appendix C:

Opinion and Judgment, Supreme Court of Oklahoma ____ v-xi

Appendix D:

11 Oklahoma Statutes Annotated, Sections 1601, 1602 and 1607 (Laws, 1959) ____ xxi-xxii

Appendix E:

11 Oklahoma Statutes Annotated, Sections 1651, 1652, and 1657 ____ xxii-xxiii

Printing Errati: The "CONCLUSION" shown midppage 14 should precede commencement last paragraph page 17

Page

Appendix F:

11 Oklahoma Statutes Annotated, Sections 1701, 1702, and 1707 ____ xviii-xxiv

STATUTES AND CITATIONS

Constitution of the United States:

5th Amendment ____ 6
14th Amendment ____ 6

Oklahoma Constitution:

Article I, Section 1 ____ 6
Article II, Section 1 ____ 6
Article II, Section 6 ____ 6-7
Article II, Section 7 ____ 7
Article II, Section 33 ____ 7
Article V, Section 32 ____ 7
Article V, Section 46 ____ 7
Article V, Section 50 ____ 7
Article V, Section 59 ____ 8

Statutes:

28 U.S.C.A., Sections 1257(2), (3) and Sections 2101 (c), (f) ____ 4

Oklahoma Statutes:

11 O.S.A. 1601-1620 (Laws, 1959) ____ 8, 12
11 O.S.A. 1651-1670 (Laws, 1959) ____ 8, 12
11 O.S.A. 1701-1718 (Laws, 1961) ____ 8, 12

Rules of the Supreme Court of the United States:

Rules 10, 11, 15, 19, 21, 22 and 23 ____ 4

Page

Pertinent Authority Presented to the Oklahoma Supreme Court:

Barrett v. *Board of Commissioners of Tulsa County*, 185 Okl. 111, 90 P. 2d 442 16

Carrington v. Rash, 13 L. ed. 2d 675 (1965) 14

Gomillion v. *Lightfoot*, 364 U.S. 339, 5 L. ed. 2d 110, 81 Sup. Ct. 125 16

McLaughlin v. *Florida*, 379 U. S. 184, 191, 13 L. ed. 2d 222, 228, 85 Sup. Ct. 283 15

Williams v. W. Lee Johnson, 396 P. 2d 518 (Okl. 1964) 15

16 Am. Jur. 2d, Constitutional Law, Section 511 ... 17

24 Am. Jur. 2d, Elections, Sec. 53 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 196

No. _____

ROY ISAACS, S. M. ROOF, LOAL C. WILSON and J. V. GARRETT, *Petitioners*,

vs.

THE CITY OF OKLAHOMA CITY, a municipal corporation, URBAN RENEWAL AUTHORITY, GRANVILLE TOMERLIN, Chairman, F. D. MOON, Vice Chairman, C. KENNETH WOODWARD, Secretary, REUBEN G. MARTIN, member, RALPH L. BOLEN, member, JAMES T. YEILDING, Executive Director; TULSA URBAN RENEWAL AUTHORITY, a purported public body corporate of Tulsa, Oklahoma, and its officers and members, LEEMAN NIX, Chairman, ROBERT LAIRD, Vice Chairman, MURRAY McCUNE, member, PAUL CHAPMAN, Executive Director and Secretary, and THE CITY OF TULSA, OKLAHOMA, a municipal corporation, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

Petitioners pray that a Writ of Certiorari issue to the Supreme Court of the State of Oklahoma to review the opinion and judgment of said Supreme Court of December

27, 1966, in consolidated cases No. 41,276 and No. 41,527. Petitions for Rehearing, timely filed, were denied on March 21, 1967, in each case. Applications for Leave to File Second Petition for Rehearing in each case were denied, May 19, 1967.

Orders staying enforcement of mandates are conditioned upon a Petition for Writ of Certiorari being filed in the Supreme Court of the United States on or before June 19, 1967.

OPINION BELOW

The opinion and judgment of the Supreme Court of the State of Oklahoma complained of, covers two State District Court actions, involving identical legal questions. Separate appeals were filed, later consolidated in the Supreme Court for argument, decision and opinion.

The District Court judgments, entered without opinions, not officially reported, are printed, as Appendixes "A" and "B" hereto. The opinion and judgment of the Supreme Court of the State of Oklahoma, affirming and holding the provisions of the urban redevelopment statutes complained of constitutional and not in violation of "due process of law" or "equal protection of the law" provisions of the 14th Amendment to the United States Constitution, is reported in Volume 37, No. 48, pages 2587-2596, of THE JOURNAL, published December 31, 1966, by the Oklahoma Bar Association. A copy of such judgment and opinion is printed as Appendix "C" hereto.

JURISDICTION

The opinion and judgment of the Supreme Court of the State of Oklahoma was entered on December 27, 1966 (Appendix "C" hereto). Petition for Rehearing was timely filed in each case on January 11, 1967. Each was denied March 21, 1967. Applications for leave to file Second Petition for Rehearing were timely filed April 5, 1967, in each case, under Rule 33 of the Oklahoma Supreme Court, and denied May 19, 1967 (R. 169).

The State District Courts sustained General Demurrers to the Petitions. Petitioners elected to stand on the Petitions. The courts dismissed with prejudice. Upon denial of Motions for New Trial, timely filed, (prerequisite to appeal in Oklahoma) appeals by Petitions in Error, with case-made attached in one case, and upon the original records in the other, were timely lodged in the Supreme Court of Oklahoma as provided by law.

Notice of Petition for Certiorari and appeal to the Supreme Court of the United States was timely filed in the Supreme Court of the State of Oklahoma on May 19, 1967, in case No. 41527 and on May 22, 1967, in case No. 41276, with attached Certificates showing service of such Notice upon the attorneys of record for respondents (R. 178 & R. 183). Motions to Stay Mandate and for Clerk to transmit original or copies of record, pending the outcome of this Petition for Certiorari, were duly filed on the 19th and 22nd day of May, 1967, in the Supreme Court of Oklahoma (R. 170 & R. 172); said Court ordered its mandate to issue, but *stayed enforcement* thereof pending the perfecting of appeals by these petitioners to this

Court, and further provided, that, if such appeal will stand perfected on or before the 19th day of June, 1967 (R. 174 & 176) enforcement of the mandate in the Supreme Court of Oklahoma in each case shall be further stayed until such time as the Supreme Court of the United States shall have rendered a final decision therein or pending further orders of the Supreme Court of Oklahoma; conditioned upon the filing of a Stay Bond in the Supreme Court; Stay Bonds, so approved, were filed on the 19th Court, Stay Bonds, so approved, were filed on the 19th and 22nd of May, 1967 (R. 188 & 191).

The jurisdiction of this Court is invoked under Title 28, U.S.C.A., Sections 1257(2) (3) and 2101(c) (f) and Rules 10, 11, 15, 19, 21, 22 and 23 of the Supreme Court of the United States. The petitioners have exhaused all their State Court remedies. The constitutional and federal questions were duly presented to the State District Courts by original and amended Petitions (R. 4, 25 and 47); by Motions for New Trial in said courts (R. 34 and R. 60) and presented to the Supreme Court of the State of Oklahoma by Petitions in Error (R. 1 and R. 44); by the briefs (R. 63 and R. 71); and oral arguments presented in support thereof; in Petitions for Rehearing (R. 90) and supporting briefs (R. 99).

QUESTIONS PRESENTED FOR REVIEW

1. Do the provisions of the Oklahoma Urban Renewal Law offend or violate the "equal protection of the Law" or the "due process of Law" clauses of the 14th Amendment to the Constitution of the United States? Where,

(a) Such provisions (11 O.S.A., Sections 1607, 1657 and 1707) *withhold the rights and opportunity of franchise and self-determination* from the "qualified, property taxpaying voters," in Tulsa and in Oklahoma City, to ultimately determine by majority vote, at a special election for such purpose, whether their city "shall exercise the authority granted" by the Urban Renewal Law; and where such *right of franchise and self-determination* is *expressly granted to, and required of,* "the qualified, property taxpaying voters" *residing in all other cities of the State of Oklahoma* to implement urban renewal and to create an *urban renewal authority empowered to acquire* property by eminent domain? and

(b) Do the identical subjects and purposes of separate enactments, *without variations except* sections on "Citation" and "Application" for each separate enactment, disclose any *"real"* or *"characteristic" differences* then existing to *justify varying treatment* for "qualified, property taxpaying voters" of cities *over 100,000* population from that accorded such category of voters in cities *under 100,000* population? and

(c) Whether the numerical classifications drawn as the basis for such varying treatment are unreasonable in the light of the *identical subjects* and *purposes of such legislation?* or does such varying treatment of *voting rights* of citizens concerning their *property* and rights conferring new powers of eminent domain in the Oklahoma Urban Renewal Statutes constitute "individous discrimination" that offends or violates either the "equal protection" of the law, the "rights," and "due process of law" guarantee of the United States Constitution?

2. Whether petitioners are denied "due process of law" under the 5th Amendment to the Constitution of the

United States where they are denied any right of or opportunity to exercise the right of franchise, or relief for denial thereof, concerning their properties affected thereby.

CONSTITUTIONS INVOLVED

CONSTITUTION OF THE UNITED STATES:
Fifth Amendment:

"No person shall be * * * deprived * * * of property, without due process of law; * * *."

Fourteenth Amendment, Section 1 in part:

"* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of * * * property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

CONSTITUTION OF THE STATE OF OKLAHOMA:

Article I, Section 1:

"The State of Oklahoma is an inseparable part of the federal union, and the Constitution of the United States is the supreme law of the land."

Article II, Section 1:

"All political power is inherent in the people; and government is instituted for their protection, security and benefit, and to promote their general welfare; and they have the right to alter or reform the same whenever the public good may require it: Provided, such change be not repugnant to the Constitution of the United States."

Article II, Section 6:

"The courts of justice of the states shall be open to

every person and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay or prejudice."

Article II, Section 7:

"No person shall be deprived of * * * property, without due process of law."

Article II, Section 33:

"The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people."

Article V, Section 32:

"No special or local law shall be considered by the Legislature until notice of the intended introduction of such bill or bills shall first have been published for four consecutive weeks in some weekly newspaper published or of general circulation in the city or county affected by such law, stating in substance the contents thereof, and verified proof of such publication filed with the Secretary of State."

Article V, Section 46, in part:

"Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law authorizing: * * * creating offices or prescribing the powers and duties of officers in counties, *cities*, towns, election or school districts * * * exempting property from taxation; * * *."

Article V, Section 50:

"Legislature shall pass no law exempting any property within this state from taxation, except as otherwise provided in this Constitution."

Article V, Section 59:

"Laws of a general nature shall have a uniform operation throughout the state, and where a general law can be made applicable, no special law shall be enacted."

STATUTES INVOLVED

OKLAHOMA STATUTES ON Urban Redevelopment:

11 O.S.A. 1601-1620. Laws 1959, page 61 *et seq.* Approved April 7, 1959. "The Urban Redevelopment Law"; for cities over 100,000 population.

11 O.S.A. 1651-1670. Laws 1959, page 43 *et seq.* Approved June 23, 1959. "The Urban Redevelopment Act"; for cities of 10,000 to 100,000 population.

11 O.S.A. 1701-1718. Laws of 1961, page 45 *et seq.* Approved June 29, 1961. "Urban Redevelopment Act of 1961"; for cities under 10,000 population.

The provisions of each of the foregoing are lengthy. Their pertinent text are printed in Appendixes "D", "E", and "F" hereof.

STATEMENT OF THE CASE

Petitioners are each owners of real property, taxpayers, and registered voter-citizens of the State of Oklahoma. Roy Isaacs so qualified in Oklahoma City. S. M. Roof, Loal C. Wilson, and J. V. Garrett so qualified in Tulsa, Oklahoma. Two separate Petitions were filed in State District Courts. Isaacs filed for himself and for others similarly situated at Oklahoma City against the City of Oklahoma City, a municipal corporation, Urban Renewal Authority, its Chairman, Vice Chairman, Secretary, Members

and Executive Director. Roof, Wilson and Garrett filed at Tulsa for themselves and all others similarly situated against Tulsa Urban Renewal Authority, its officers and directors, the City of Tulsa, Oklahoma, a municipal corporation, and its officers. All petitioners were

"qualified, property taxpaying voters"

of Oklahoma.

The District Court Petitions each sought Declaratory and Injunctive relief; *i. e.*, to decree invalid and unconstitutional certain provisions of the Urban Renewal Statutes of Oklahoma, which authorized and empowered the municipal governing bodies of Oklahoma City and of Tulsa, *to implement urban renewal for each such city without requiring, authorizing or allowing the*

"qualified, property taxpaying voters"

in either the *City of Tulsa* or in the *City of Oklahoma City*, the right and opportunity to determine by majority vote, at a special election called for such purpose, whether or not to implement urban renewal in their respective cities. The right to make such ultimate determination by majority vote, at a special election called for such purposes, was EXPRESSLY GRANTED by the statutes complained of to the

"qualified, property taxpaying voters"

residing in all OTHER CITIES OF THE STATE OF OKLAHOMA by such state legislation.

Complaints were presented by the District Court Petitions that the withholding and denial of such right of

franchise from the petitioners as citizens of Oklahoma, so qualified in Tulsa and in Oklahoma City, while such statutes expressly afforded such franchise rights and opportunity to other citizens so qualified, in all *other cities of the State of Oklahoma*, constituted a denial of the right to "due process of law" and a denial of "equal protection of the law" guaranteed to petitioners under the Constitution of the United States.

That the failure *to recognize and grant equal voting rights*, by state law, to state taxpaying voters, *based solely on differences in population of the respective cities*, on *identical subjects*, having *identical objectives*, for *all cities*, constitutes "invidious discrimination" against the petitioners; and, offends and violates the equal protection of the law and due process of law provisions of the 14th Amendment and 5th Amendment to the United States Constitution.

Respondents presented general demurrers to the Petitions (R. 29 and R. 57). The trial court sustained the demurrers (R. 32 and R. 58). Petitioners elected to stand on their Petitions and the courts dismissed with prejudice (R. 32 and R. 58). Timely motions for new trial (prerequisite to appeal under Oklahoma procedure) were duly filed (R. 34 and R. 60), overruled; and notice of appeal given (R. 35 and R. 61). Appeals were timely lodged in the Supreme Court of Oklahoma, by Petitions in Error (R. 1 and R. 44), upon the *original records* in the Tulsa appeal and with case-made attached to the Oklahoma City appeal.

The separate appeals, after briefs filed, were consolidated in the Oklahoma Supreme Court (R. 72) for consideration and decision before oral arguments. Both involved the same questions of law for determination.

REASONS FOR GRANTING THE WRIT

(a) The statutory denial, by withholding the right of franchise from the "qualified, property taxpaying voters" of Oklahoma City and Tulsa on the implementation of urban renewal, adversely affects the "civil rights" and "property rights" of approximately one-third of all the taxpaying urban voters of Oklahoma. Such rights are substantial and valuable.

(b) The Oklahoma Urban Redevelopment Statutes, enacted under the scheme and guise of three separate enactments, each expressly applying to cities of *certain fixed numerical population* (which combined encompass all the cities of the State of Oklahoma), identical in *subject* and *purpose*, reflected by the second and third enactments merely repeating the provisions of the first enactment, do not reflect any "real" or "characteristic" differences to justify *varying treatment of voting rights* for the "property taxpaying voters" of any cities of Oklahoma. The *objective* and *purposes* of the *legislation* are *identical*, hence *arbitrary classification by population alone*, does not constitute any *reasonable basis for varying treatment* of *voting rights* of *identical classes of voters;* i. e., "qualified, property taxpaying voters" of any such cities.

(c) The statutory denial by withholding the right of franchise from citizens of Tulsa and Oklahoma City, un-

der the circumstances shown, is tantamount to denial of "due process of law" under both the 5th Amendment and the 14th Amendment to the U.S. Constitution. In addition, it constitutes a denial of "equal protection of the law" guaraneed by the Constitution under the 14th Amendment, for identically situated citizens under the same or similar situations and circumstances.

(d) The refusal of the Oklahoma State Courts to protect petitioners *in their constitutional guarantees* constitutes an additional "denial of due process of law" under the United States Constitution sufficient to invoke judicial inquiry by the Supreme Court of the United States, upon the Petition herein for the relief sought by petitioners. All other avenues by which to seek relief have been exhausted. No other forum remains.

(e) At the time 11 O.S.A. 1601-1620 was enacted (April, 1959), only two cities of Oklahoma were recognized as having a need for any urban redevelopment law and authority to implement such law. However, the *same legislative session* (June, 1959) recognized that there was a need for the urban renewal law to be extended to encompass all cities over 10,000 population, but not exceeding 100,000 population (12 O.S.A. 1651-1670). This, *without any actual or material change of conditions in the "blight" or "blighted areas" or deterioration of the cities of Oklahoma.* The only *variation added by the second enactment,* in the treatment of the citizens involved, was the addition of subparagraph (c) to Section 1607 of the first act (shown by italics in Appendixes "E" and "F").

(f) The Oklahoma Urban Redevelopment Law is arbitrary and capricious, resting on a false and deficient population classification, excluding from the general law part of the class naturally belonging to and not dissimilar from the general class of city voters so qualified.

(g) The arbitrary and capricious legislative classification cannot be validated, by embracing each arbitrary and capricious class in a separate legislative act, so as to circumvent the prohibition of the Constitution against invidious discrimination and variation of treatment of citizens on identical matters.

(h) The denial of equal voting rights to voters in Oklahoma City and Tulsa, as the largest class, on the ground that their municipal problems are more acute, complex and confusing or that such voters are too ignorant and uninformed to cast an intelligent vote, or, upon the ground that voting in such cities is too cumbersome, expensive, impracticable and unnecessary, is a blanket indictment of the most fundamental process of democratic government and denies all voters of Oklahoma City and Tulsa, so qualified, the equal protection of the law.

(i) The Oklahoma State Courts have refused to recognize the clear mandates on equal protection of the law and due process of law provisions of the United States Constitution, for all citizens under similar situations and circumstances concerning the right of franchise.

(j) The Oklahoma courts have further refused to recognize the provisions and mandates of the Oklahoma Constitution, prohibiting the enactment of local and spe-

cial laws "authorizing" or "creating" offices in "cities" and further requiring that laws of a general nature shall have uniform operation throughout the state; which mandates have long been followed and so construed by a long line of decisions of the Oklahoma courts.

(k) That the refusal and denial of the rights complained of, paragraphs (i) and (j) above, constitute denial of "due process of law" which should invoke the concern and judicial inquiry by this court.

The basic questions presented by this Petition are whether the denial of equal voting rights constitutes a denial of equal protection of the law; and whether the withholding and denial of an opportunity to exercise franchise concerning property and property rights constitutes a denial of due process, under the 5th and 14th Amendments of the United States Constitution.

CONCLUSION

This Court in *Carrington* v. *Rash*, 13 L. ed. 2d 675 (1965), in reviewing voting rights in Texas, held (R. 101—Brief, p. 40):

> "Judicial inquiry under the equal protection clause does not end *with a showing of equal application among the members of the class defined by the legislation;* the courts must *reach and determine the question whether the classifications drawn in a statute are reasonable in the light of its purpose.*" (Emphasis supplied)

The Court further held, that,

> "Fencing out from the franchise a section of the population because of the way they may vote is constitu-

> tionally impermissible; that exercise of voting rights cannot constitutionally be obliterated because of a failure of the political views of a particular group of bona fide residents.
>
> "The states may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the state."

The Court therein quoted from *McLaughlin* v. *Florida*, 379 U. S. 184, 191, 13 L. ed. 2d 222, 228, 85 Sup. Ct. 283, with approval as follows:

> "The Courts must reach and determine the question of whether the classifications drawn in a statute are reasonable in the light of its purposes."

The Oklahoma court heretofore applied the same process of reasoning in *Williams* v. *W. Lee Johnson*, 396 P. 2d 518 (Okl. 1964), in holding unconstitutional legislation creating a counciliation department in counties with population of more than 200,000 and less than 400,000, as a *local or special law*. The reason given:

> "* * * Since there was no *characteristic differences* justifying varying treatment for a county over 400,000 population and a county under 400,000 population, on the same problem or subject matter, measured by the same yardstick, *there is no 'characteristic difference'*."

Therein the Oklahoma Court properly applied the rule. It stated:

> "Attempted classification of counties on basis of population for legislative purposes *which is not founded upon real and substantial distinctions and in which designated differences do not bear some reasonable, rational relation to the subject matter is unconsti-*

tutional as a local or special law, O. S. 1961, Constitution, Art. 5, Sections 32, 46, 59." (Emphasis supplied)

This was a well-reasoned and well-researched opinion by Justice Williams, in which he quoted with approval from the third paragraph of the syllabus in *Barrett* v. *Board of Commissioners of Tulsa County*, 185 Okl. 111, 90 P. 2d 442, as follows:

> "Local or special laws are all those that rest on a false or deficient classification. Their vice is that they do not embrace. They create preference and establish inequality. They apply to persons, things, and places possessed of certain qualities or situations and exclude from their effect other persons, things, or places *which are not dissimilar in this respect.*" (Emphasis supplied)

In 24 Am. Jur. 2d on Elections, Section 53, it is said (R. 101, Brief of Plaintiffs in Error, p. 43):

> "The conception of political equality means only one thing—one person, one vote. Once the class of voters is chosen and their qualifications specified, there is no constitutional way by which equality of voting power may be evaded."

Where is the equality of *voting power* between the "taxpayer voters" of Oklahoma City and Tulsa on the one side and the "taxpayer voters" of the other cities of Oklahoma on urban renewal matters? The only significant differences recognized between them by the Legislature, to distinguish one group from the other, is in the *size of the population of the city* in which they reside.

In *Gomillion* v. *Lightfoot*, 364 U. S. 339, 5 L. ed. 2d 110, 81 Sup. Ct. 125, it is held that when the state exer-

cises power *wholly within the domain of state interest,* it is generally insulated from federal judicial review, *but that such insulation is not carried over when the state power is used as an instrument for circumventing federally protected rights, such as the right to equal protection of law and equal rights under the law.*

The majority opinion in the case at bar is based upon the fallacy that *classification by population alone* is valid for *any legislative purposes.*

In 16 Am. Jur. 2d on Constitutional Law, Section 511, it is stated:

> "It is a mistaken idea that because classification on the basis of population is sustainable in respect of legislation on certain objects, it may be appropriate for all purposes of classification in legislative enactments. Such a basis for classification must have a reasonable relation to the purposes and objects of the legislation and must be based upon a rational difference in the necessities or conditions found in the groups subjected to different laws. If no such relation and difference exists, the classification is invalid. * * *"

Until the adoption of the majority opinion in the case at bar, this Court has always seen fit to apply the above qualifications; and, if there were *distinguishing factors* to *justify different treatment for certain classes,* the distinctions have heretofore *been carefully pointed out,* instead of being glossed over, avoided and ignored, in the manner reflected by the majority opinion herein.

We respectfully submit that the questions here presented are of great public interest, involve the rights of

a great number of citizens of Oklahoma and perhaps other states, millions of dollars in property rights, and the possible expenditure of more millions of dollars of tax money on projects that may be unlawful under local state law, as measured by the requirements of the United States Constitution. Petitioners, for themselves and for the benefit of all other citizens of Oklahoma similarly situated, pray that this Court, in its sound judicial discretion, grant the Writ of Certiorari to the Supreme Court of the State of Oklahoma.

Respectfully submitted,

TED R. FISHER
LEWIS C. JOHNSON
200 Law Building
Tulsa, Oklahoma 74119
Attorneys for Petitioners

JUNE, 1967

APPENDIX "A"

Filed District Court of Tulsa County, Mar. 29, 1965. Samuel W. Fry, Court Clerk, State of Oklahoma, Tulsa County.

IN THE DISTRICT COURT WITHIN AND FOR TULSA COUNTY, STATE OF OKLAHOMA

No. 108,203

S. M. ROOF, et al., Plaintiffs,

vs.

TULSA URBAN RENEWAL AUTHORITY, a public body corporate, et al., Defendants.

JOURNAL ENTRY OF ORDERS AND JUDGMENT

NOW, on this 19th day of March, 1965, the above entitled cause comes on for hearing on the combined Motions and Demurrer of the Defendants and each of them to the Petition of the Plaintiffs, pursuant to assignment heretofore made.

The Plaintiffs are present by their attorneys, Johnson & Fisher, by Ted R. Fisher. The Defendants are present by their attorneys, Smith & Brown and Charles E. Norman, City Attorney, by Finis Smith.

Thereupon, said matter is duly argued to the Court, and the Court having heretofore been furnished with written Briefs by each of the parties and by the Attorney General of the State of Oklahoma, and being duly advised in the premises, finds that said Demurrer to Plaintiff's Petition should be sustained.

IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED and DECREED that the Demurrer of the Defendants to the Petition of Plaintiffs should be and the same is hereby sustained and exceptions are allowed to Plaintiffs.

Thereupon, the Plaintiffs announced their election in Open Court to stand upon their Petition. Upon such election by Plaintiffs, the Court finds, ORDERS and ADJUDGES that Plaintiffs' Petition be and the same is hereby dismissed, and exceptions are allowed to Plaintiffs.

/s/ Raymond W. Graham
District Judge

APPROVED AS TO FORM:
JOHNSON & FISHER
By /s/ Ted R. Fisher
Ted R. Fisher
Attorneys for Plaintiffs

SMITH & BROWN
By /s/ Finis Smith
/s/ Charles Norman
Charles Norman, Tulsa City Attorney
Attorneys for Defendants.

APPENDIX "B"

Filed District Court, Oklahoma County, Okla. May 25, 9:49 A. M. '64. Dale Smith, Court Clerk. By G. A. Cantell.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

No. 162,322

Roy Isaacs, for himself and others similarly situated, Plaintiff,

vs.

City of Oklahoma City, Municipal Corporation; Urban Renewal Authority; Granville Tomerlin, Chairman; F. D. Moon, Vice-Chairman; C. Kenneth Woodard, Secretary; Reuben G. Martin, Member; Ralph L. Bolen, Member; James T. Yeilding, Executive Director, Defendants.

JUDGMENT

On this 15th day of May, 1964, the above-entitled cause came on for hearing pursuant to regular assignment upon the demurrers of the defendants herein to each cause of action in the amended petition of the plaintiff, the parties appearing by their several attorneys of record, and the court having heard argument of counsel and being fully and sufficiently advised in the premises, finds that the Urban Redevelopment Law attacked on the grounds of unconstitutionality by plaintiff herein, is constitutional and valid and that the demurrers of the defendants should be sustained, and that the amended petition of the plaintiff fails to state a cause of action against the defendants or any of them.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the court that the demurrers of the defendants to each cause of action of plaintiff's amended petition herein be, and the same are hereby sustained, to which plaintiff excepts and his exceptions are allowed.

Thereupon plaintiff in open court announced that he elected to stand upon his amended petition and the court thereupon finds that said causes of action should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the court that the causes of action in plaintiff's amended petition be, and the same hereby are, dismissed, to which plaintiff excepts and his exceptions are allowed.

Thereupon plaintiff gave notice in open court that he intended to and did appeal to the Supreme Court of the State of Oklahoma and requested that such notice be noted upon the proper trial docket of the court, which is accordingly done.

Thereupon, plaintiff requested an extension of time within which to make and serve case-made or transcript herein, and for good cause shown, it is ordered that the time within which plaintiff shall make and serve case-made or transcript be and is hereby extended to July 14, 1964, defendants to have three days thereafter within which to suggest amendments and the same to be signed and settled upon three days' notice by either party.

Glen O. Morris
District Judge

APPROVED AS TO FORM:
SID WHITE
Sid White, Attorney for Plaintiff

HORACE THOMPSON

Horace Thompson, Assistant Municipal Counselor for Defendant, City of Oklahoma City

CROWE, BOXLEY, DUNLEVY, THWEATT, SWINFORD & JOHNSON

By V. P. Crowe

V. P. Crowe, and

PAUL R. McDANIEL

Paul R. McDaniel

MONNET, HAYES, BULLIS, GRUB & THOMPSON

By COLEMAN HAYES

Coleman Hayes,

Attorneys for Defendants Urban Renewal Authority, Granville Tomerlin, F. D. Moon, C. Kenneth Woodard, Reuben G. Martin, Ralph L. Bolen and James T. Yeilding.

APPPENDIX "C"

Filed In Supreme Court of Oklahoma Dec. 27, 1966. Andy Payne, Clerk.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 41,276

Roy Isaacs for himself and others similarly situated, Plaintiff in Error,

vs.

The City of Oklahoma City, a Municipal Corporation, Urban Renewal Authority, Granville Tomerlin, Chairman, F. D. Moon, Vice-Chairman, C. Kenneth Woodard, Secre-

tary, Reuben G. Martin, Member, Ralph L. Bolen, Member, James T. Yeilding, Executive Director, Defendants in Error.

AND

No. 41,527

S. M. Roof, Loal C. Wilson and J. V. Garrett, Plaintiffs in Error,

vs.

Tulsa Urban Renewal Authority, a purported public body corporate, of Tulsa, Oklahoma, and its Officers and Members, Leeman Nix, Chairman, Robert Laird, Vice-Chairman, Murray McCune, Member, Paul Chapman, Executive Director and Secretary, and The City of Tulsa, Oklahoma, a Municipal Corporation, Defendants in Error.

CONSOLIDATED UNDER NO. 41,276

SYLLABUS

1. The purpose of Urban Redevelopment Act was to enable cities to take steps to eliminate slums and blighted areas, injurious to public health, safety, morals and welfare of residents of state.
2. While the Legislature cannot delegate its constitutional power to make laws, it can make a law which delegates the power to determine some fact or state of things upon which the law shall become operative, that is the Legislature may enact general provisions but leave to those who are to act discretion in filling in the details, provided the Legislature fixes reasonable and definite standards governing the exercise of such authority.
3. The clearance and redevelopment of blighted areas of a city for which private property may be acquired by condemnation under Urban Redevelopment Act are a "public use and purpose", and hence Act is not invalid

as authorizing city to acquire private property by condemnation for a private use, even though Act authorizes city to sell, lease or otherwise transfer property acquired to private redevelopers who may profit therefrom.

4. Legislature may, after declaring policy, and fixing primary standard, confer upon others power to prescribe regulations to carry legislation into effect.

5. Where language of statute is plain and unambiguous, there is no room for the construction thereof, and courts may not search for a meaning beyond the statute itself, but will give it the meaning intended by the Legislature.

6. Exemption of property from taxation, while it is owned by a city, or an Urban Renewal Authority, does not do violence to constitutional provisions with respect to taxation.

7. Urban Redevelopment Act was not vague or indefinite and does not violate due process clause of constitution.

8. Judicial examination of any law enacted by the Legislature proceeds on the assumption that such law is valid unless it contravene an express inhibition of the constitution or one necessarily implied from some express affirmative constitutional provision.

9. Urban Redevelopment Act, in being applicable only to cities with a population in excess of 100,000 is not a special or local law and is not arbitrary or capricious and is not unconstitutional on these grounds.

10. An act of the Legislature is not to be stricken down on ground that it is unconstitutional, unless infringement of the constitution is clear beyond a reasonable doubt.

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY,

AND

APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY, STATE OF OKLAHOMA

Hon. Glen O. Morris, District Judge
Hon. Raymond W. Graham, District Judge

Appeal from order and judgment sustaining demurrer to amended petition in declaratory judgment action. Roy Isaacs, plaintiff in error appeals in case No. 41,276. Appeal from order and judgment dismissing petition in declaratory judgment action. S. M. Roof, et al., plaintiffs in error appeal in case No. 41,527.

AFFIRMED

Sid White, Oklahoma City, and Ted R. Fisher of Johnson & Fisher, Tulsa, Okla., For Plaintiffs in Error.

Roy H. Sempter, Horace Thompson, Okla. City, Okla., For Defendant in Error, City of Oklahoma City.

V. P. Crowe and Paul R. McDaniel, of Crowe, Boxley, Dunlevy, Thweatt, Swinford & Johnson, & Coleman Hayes and Russell F. Thompson, of Monnett, Hayes, Bullis, Grubb & Thompson, Oklahoma City, Oklahoma and Dan Batchelor, Okla. City, Okla., For Defendant in Error, Urban Renewal Authority.

Smith & Brown, and Chas. E. Norman, by Finis Smith, Tulsa, Oklahoma, For Defendants in Error, Tulsa Urban Renewal Authority.

T. Murray Robinson & Wm. N. Christian, of Robinson, Robertson and Barnes, Oklahoma City, Oklahoma, For S. D. Rorem, Amicus Curiae.

HALLEY, C. J.:

There are two cases involved here, which because of the similarity of issues, have, by our order of _____ 1966, been consolidated for decision.

The first case is an appeal from the judgment of the District Court of Oklahoma County in sustaining a demurrer to the petition of Roy Isaacs, plaintiff in error here, who, for himself and others similarly situated, filed a declaratory judgment action against the defendants in error, the City of Oklahoma City, a municipal corporation, the Urban Renewal Authority and the individual members of the Authority's Board of Commissioners and its executive director, seeking a declaration of the unconstitutionality of the Urban Redevelopment Law, 11 O. S. 1961, Section 1601 et seq., and for injunctive relief.

The second case is an appeal from the District Court of Tulsa County in sustaining the demurrer of the defendants in error, Tulsa Urban Renewal Authority and its officers, and the City of Tulsa, Oklahoma to the petition of the plaintiffs in error, S. M. Roof, L. C. Wilson and J. V. Garret. As in the Oklahoma City case, plaintiffs in error, in the Tulsa case sought a declaratory judgment against the Tulsa Urban Renewal Authority, its officers, and against the City of Tulsa, Oklahoma, decreeing the creation of the Tulsa Urban Renewal Authority under

the provisions of 11 O. S. 1961, Section 1601-1620, to be void and violative of certain provisions of the Oklahoma Constitution, and for injunctive relief.

In the Oklahoma City case, all defendants in error filed motions to strike and to make more definite and certain with respect to the petition of plaintiff. These motions were sustained in part and overruled in part by the trial court. Accordingly, the plaintiff in error filed an amended petition, to which each of the defendants in error demurred. All demurrers were sustained by the trial court and the Urban Redevelopment law was held to be constitutional. Plaintiff in error filed his motion for a new trial, which was overruled, and he thereupon perfected his appeal here.

In the Tulsa case, the general demurrer to plaintiff's in error petition was sustained. Plaintiff's in error elected to stand on their petition. The trial court dismissed the action. Plaintiff's in error filed a motion for a new trial, which was overruled. Plaintiff's in error thereupon lodged their appeal here.

For convenience, plaintiffs in error in both cases shall be referred to herein as plaintiffs and the defendants shall be referred to by their respective names, if necessary.

The statutory provisions under attack, 11 O. S. 1961, Sec. 1601-1620, covers some thirty pages in the statutes, and we do not deem it necessary to set out the act in full, but reference will be made herein to the various sections of the act.

Generally it may be said, as stated in Section 1604 of the act, that the over-all purpose of the act is to enable certain cities to take steps to eliminate slum and blighted areas which constitute a serious and growing menace to the public health, safety, morals and welfare of the citizens of the state, the elimination of which is declared to be a matter of public interest.

Many grounds are asserted by plaintiff for the unconstitutionality of the act, which we number and will discuss consecutively, for convenience and to meet the method of presentation.

Plaintiff, as his first ground, contends that the act attempts to confer legislative, executive and judicial authority upon the city and the authority. Other courts, in discussing this objection to similar Urban Renewal Acts, have uniformly rejected this contention, where the legislature has adopted the policy and set forth the guide lines which are to be utilized by the cities and the authority. The Supreme Court of Kansas, in the case of State ex rel. Fatzer v. Urban Renewal Agency of Kansas City, 179 Kans. 435, 296 P. 2d 656, had the following to say about this point:

> "We think it clear that while the legislature cannot delegate its constitutional power to make a law, it can make a law which delegates the power to determine some fact or state of things upon which such law shall become operative. In other words, the legislature may enact general provisions but leave to those who are to act certain discretion in 'filling in the details' so to speak, provided of course, it fixes reasonable and definite standards which govern the exercise of such authority."

In addition thereto, we have consistently held in the past, in a variety of factual situations that the legislature has no authority to delegate power to an administrative board to make laws, but it may delegate to an administrative board the authority to prescribe and enforce rules and regulations to carry into effect and to aid in the enforcement of existing laws. See Rush v. Brown, 187 Okl. 97, 101 P. 2d 262, and also in the case of Harris v. State, 207 Okl. 589, 251 P. 2d 799, we quoted with favor the following:

> "The Legislature cannot delegate legislative power, but it may delegate authority or discretion to be exercised under and in pursuance of the law. It may delegate power to determine some facts or state of things upon which the law makes its own operation depend."

The same argument was made in connection with the establishment of the Oklahoma Turnpike Authority, and in that case, styled Application of Oklahoma Turnpike Authority, 203 Okl. 335, 221 P. 2d 795, we likewise held that such delegation of authority by the legislature to the Turnpike Authority did not violate the constitutional provision forbidding the delegation to any one of any of the powers of the state. We therefore hold that the first contention of the plaintiff to be without merit.

For his point No. 2, plaintiff asserts that the act allows a city and an authority to condemn land and property for other than public purposes. The Supreme Court of the United States, in the case of Berman v. Parker, 348 U. S. 26, 99 L. Ed. 27 (1954), passed upon the validity of the Urban Renewal Act of the District of Columbia.

In connection with a similar objection raised as to the District of Columbia Act, the Court stated:

> "Once the object is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear. For the power of eminent domain is merely the means to the end. * * * Here one of the means chosen is the use of private enterprise for the redevelopment of the area. Appellants urge that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established. * * * The public end may be as well or better served through an agency of private enterprise than through a department of government—or so the Congress might conclude. We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects."

Likewise, the Kansas court, in State ex rel. Fatzer v. Urban Renewal Agency of Kansas City, supra, stated:

> "It is elementary that the legislature possesses no power to authorize the appropriation of one's property for a private use or purpose, but it is equally well settled that the right to take private property for a public use is inherent in the state, and that the legislature may authorize the acquisition of private property for a public use provided the owner is compensated therefor."

In this connection see also Delfield v. City of Tulsa, 191 Okl. 541, 131 P. 2d 754.

Section 1604 of the act in question makes it clear that the purposes for which property may be condemned

are public purposes, and we hold therefore, that plaintiff's second point is not well taken.

Plaintiff, for his 3rd point, maintains that the act confers on the city and the authority the power to arbitrarily ascertain and declare public purpose, without definite standards. This contention is not supported by a reading of the act. Sections 1603 (g) (h), 1604, 1605 and 1607 make it apparent that neither the city nor the authority have the power to arbitrarily ascertain and declare public purposes. These sections set forth clear and definite standards to be followed. Similar standards were approved in the Berman v. Parker case, supra. We find that this is not a valid objection.

For his 4th objection, plaintiff argues that the act allows the city to "judicially" determine blighted areas. The act does authorize the city to declare and identify blighted areas, but only according to the standards set forth in the act. Such determination is manifestly not an exercise of "judicial" authority. There is no "judicial" authority conferred upon the city by the act.

As objection No. 5, the plaintiff contends that the act allows the city and the authority to condemn property and then to sell it to private interests. A review of the authorities indicates that this is one of the most frequently raised objections to Urban Renewal Act. Without exception, redevelopment programs have been upheld against this type of objection, usually on the grounds that the public use or public purpose is legitimately served by the legislative object of slum or blighted area clearance, and

the fact that private interests benefit incidentally or that private parties acquire ownership after the public purpose of the elimination of the undesirable conditions has been served, is merely incidental to the main legislative purpose. Some 21 cases are cited by the annotator in 44 A.L.R. 2d 1414, at page 1420, including the Berman v. Parker case, supra, rejecting the argument raised by plaintiff herein under his 5th point. We therefore, in accord with the weight of authority, hold plaintiff's 5th objection to be without merit.

Plaintiff, in his 6th objection, asserts that the act gives to the city and the authority the power to create indebtedness and to issue bonds, all in violation of the Oklahoma Constitution. He further asserts that the act unconstitutionally empowers the city or the authority to create debts. Plaintiff is correct in his assertion that the act gives to the city the power to establish means for the financing of redevelopment programs, and also that the act grants to the authority the power to issue revenue bonds. However, such power, granted by the act to either the city or the authority, is not in derogation of the Constitution of Oklahoma, but is in accord with it. Section 1611(e) of the act permits a city to issue and sell its general obligation bonds, but only in accordance with the limitations prescribed by the laws of the state. Section 1610(k) (5) and (6) forbids an authority to issue general obligation bonds, but Section 1616 (a) authorizes an authority to issue revenue bonds and sub-section (b) provides that such revenue bonds shall not constitute an indebtedness of the state or any city. Also the purchasers

of such bonds would be charged with knowledge that the bonds would not constitute an indebtedness of the state or any city. We must presume that any city or authority, issuing either general obligation bonds or revenue bonds would comply with the laws of the state with reference thereto. The legislative enactment is satisfactory as to form and content. We therefore find nothing of substance in plaintiff's 6th objection.

For his 7th point, plaintiff maintains that the act is invalid because it allows a city or the authority to exempt property from taxation. This position is not supported by the terms of the act itself. Section 1615 provides for the exemption of property from taxation which is owned by the authority, but Section 1615 (b) provides that such exemption is valid only as long as the authority owns the property. A similar contention was raised in the Oklahoma Turnpike case, supra, and there we held contrary to the position of the plaintiff. We so hold here, and find that plaintiff's contention is without merit.

Next, for point No. 8, plaintiff maintains that the act, in effect, precludes judicial review of findings made by a city or an authority. This contention is without merit, as the act, in Section 1613, sets out the manner in which there may be a judicial review of the actions of either the city or an authority.

Plaintiff, for his 9th point, asserts that the act is so vague and indefinite as to violate due process of law. A careful examination of the act reveals that the legislature has set forth definite and certain standards in the act in

such a degree as to nullify any objection of indefiniteness, and we therefore hold that plaintiff's point No. 9 is without merit. See Herzinger v. Mayor and City Council of Baltimore, 98 A. 2d 87 (Md. 1953).

For his 10th point, plaintiff maintains that the act precludes cities embracing more than one county from acting under the statute. The section in question, 1608 (j), provides:

> "Notwithstanding the provisions of this act, the provisions of this act shall not apply across county lines, regardless of annexation of territory across county line by a city."

This section would appear to be only a jurisdictional limitation of a city's power to approve an urban renewal project that extends across a county line, and does not affect, in any sense, the right of a multi-county city, to participate in the urban renewal program. We do not consider that the Legislature would do a vain and useless thing. The interpretation asked for by the plaintiff would make the act inapplicable to both Oklahoma City and Tulsa, as they were both multi-county cities at the time of the passage of the act. Such could not have been the legislative intent, and we so hold.

For his next point, plaintiff draws our attention to the fact that the Legislature has, since 1955, enacted five Urban Renewal Acts. The first two of such acts were subsequently repealed, with the provisions contained therein being generally covered by 11 O. S. 1961, Section 1601-1620, with which we are concerned here, which act was enacted by the Legislature in 1959, and numerically speak-

ing is the third Urban Renewal Act promulgated. This Act is made applicable only to cities having a population over 100,000, and would of course, apply only to Oklahoma City and Tulsa.

The fourth Act was also passed in 1939. It was designated as the "Urban Redevelopment Act" and was expressly made applicable to cities of 10,000 to 100,000 population. The last Act, enacted in 1961, was designated as "Urban Redevelopment Act of 1961". It is made applicable to cities of less than 10,000 population.

Under express provisions contained in the last two Acts, it is provided that no such city shall exercise the authority granted by the Act until a majority of the qualified voters in such city shall have approved the same.

Under the provisions of the third Act, which is at issue here, no such voting rights are granted to the voters in cities with a population of 100,000, but the authority to exercise the rights granted by the Act is vested in the governing body of such city, who shall, by appropriate resolution, proceed to exercise the authority granted by the Act.

Plaintiff argues that to deprive the citizens of a city with a population of 100,000 of the right to vote on such an issue is unreasonable and arbitrary and violates the equal protection of the law guaranteed by the Fourteenth Amendment of the U. S. Constitution and the requirement of the Oklahoma Constitution that laws of a general nature shall have uniform application throughout the state.

Plaintiff further asserts that when determining whether the Act complies with the Constitutional requirement respecting uniform application of laws throughout the state, that these three acts must be considered as Legislative enactments in pari materia. That when so considered, it is obvious that the voting restriction applicable to cities of a population of 100,000 is arbitrary and capricious and is a local or special law.

Keeping in mind that the constitutionality of only one Act, 11 O.S. 1961, Section 1601-1620, is at issue here, we feel that the confidence placed by plaintiff in the role of pari materia is misplaced. The rule of pari materia is a rule of judicial construction applicable only when the terms of a statute are ambiguous or of doubtful significance. See 82 C.J.S. 366(b) Statutes, p. 813. We have heretofore applied the rule to harmonize or sustain conflicting statutes. Plaintiff does not suggest any ambiguity with respect to the statutes in question. We therefore are not inclined to place much weight on his argument with respect to the rule of pari materia.

Neither are we inclined to attach great significance to the argument that the Act is an example of a special or local law which is prohibited by our Constitution. At the time of the enactment of the Act in question it applied only to Oklahoma City and Tulsa, as they were the only cities in Oklahoma with a population in excess of 100,000. Such a limitation does not of itself constitute an arbitrary or capricious classification. As we stated in the case of Lowden v. Oklahoma County Excise Board, 186 Okl. 706, 100 P. 2d 448, at page 450:

"In order for a law to be general in its nature and to have a uniform operation, it is not necessary that it shall operate upon every person and every locality in the state. A law may be general and have a local application or apply to a designated class if it operates equally upon all the subjects within the class for which is was adopted."

The courts of other states, when faced with the same argument as espoused by plaintiff here have uniformly held that such classification, based on population, not to be violative of constitutional requirements similar to our own. See Williamson v. Housing Authority, etc., of Augusta, 186 Ga. 673, 199 S.E. 43; State v. Housing Authority of New Orleans, 190 La. 710, 182 So. 725; Frazer v. Carr, 360 S.W. 2d 449 (1952, Tenn.).

We therefore are constrained to hold against plaintiff on this point.

For his last point, plaintiff maintains that a city or an authority, under the Act, can encumber property by the issuance of bonds, without the vote of the people, has heretofore been disposed of in our ruling in connection with plaintiff's point No. 6.

We therefore hold that the Urban Redevelopment Law, as set forth in 11 O. S. 1961, et seq., to be valid and constitutional.

During the pendency of this case on appeal, it has been called to the attention of the court that there is presently pending in the District Court of Oklahoma County a case wherein the constitutionality of the Urban Re-

development Law is being attacked on grounds other than the ones enumerated herein. Suffice it to say that our review of this matter has been limited to the points raised in this opinion and none other.

Our opinion herein makes it unnecessary for us to further consider the contention of the defendant city that plaintiff's appeal should be dismissed because of the failure of plaintiff to make defendant city a proper party to this appeal.

Judgment affirmed.

JACKSON, V.C.J., and DAVISON, WILLIAMS, and BERRY, JJ. concur.

BLACKBIRD, IRWIN, HODGES and LAVENDER, JJ., concur in part and dissent in part.

APPENDIX "D"

11 O.S.A.

"Section 1601. Citation

"This Act shall be known and may be cited as the Urban Redevelopment Law. Laws 1959, p. 61, Section 1."

"Section 1602. Application

"The provisions of this Act shall apply to all incorporated cities of this State containing in excess of one hundred thousand (100,000) population as shown by the 1950 Federal Decennial Census or any succeeding Federal Decennial Census. Laws 1959, p. 61, Section 2."

"Section 1607. Resolution by local governing body

"(a) No Urban Renewal Authority created by this Act shall exercise the authority or powers granted by this

Act until after the local governing body shall have determined by resolution that such action is in the public interest and elects to have such authority or powers exercised by the Urban Renewal Authority if one exists or is subsequently established.

"(b) No incorporated city shall exercise the authority granted by this Act until after the local governing body shall have adopted a resolution finding that: (1) One or more blighted areas exist in its area of operation; and (2) The rehabilitation, conservation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals and welfare of the residents of such area. Laws 1959, p. 64, Section 7."

APPENDIX "E"

11 O.S.A.

"Section 1651. Citation

"This Act shall be known and may be cited as The Urban Redevelopment Act. Laws 1959, p. 43, Section 1."

"Section 1652. Application

"The provisions of this Act shall apply to all incorporated cities of this State containing in excess of ten thousand (10,000) population and not to exceed one hundred thousand (100,000) population as shown by the 1950 Federal Decennial Census, or any succeeding Federal Decennial Census. Laws 1959, p. 44, Section 2."

"Section 1657. Resolution by local governing body *and approval by voters.* (Emphasis supplied)

"(a) No Urban Renewal Authority created by this Act shall exercise the authority or powers granted by this Act until after the local governing body shall have determined by resolution that such action is in the public interest and elects to have such authority or powers exercised by the Urban Renewal Authority if one exists or is subsequently established.

"(b) No incorporated city shall exercise the authority granted by this Act until after the local governing body shall have adopted a resolution finding that: (1) One or more blighted areas exist in its area of operation; and (2) the rehabilitation, conservation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals and welfare of the residents of such area.

(c) *No incorporated city shall exercise the authority granted by this Act until a majority of the qualified property taxpaying voters thereof who vote at an election to be held for that purpose shall have approved the same. Laws 1959, p. 46, Section 7.*" (Emphasis supplied)

APPENDIX "F"

11 O.S.A.

"Section 1701. Citation

"This act shall be known and may be cited as The Urban Redevelopment Act of 1961. Laws 1961, p. 45, Section 1."

"Section 1702. Application

"The provisions of this act shall apply to all incorporated cities of this state containing ten thousand (10,000) or

less population according to the last preceding Federal Decennial Census. Laws 1961, p. 45, Section 2."

"Section 1707. Resolution—*Approval by voters* (Emphasis supplied)

"(a) No Urban Renewal Authority created by this act shall exercise the authority or powers granted by this act until after the local governing body shall have determined by resolution that such action is in the public interest and elects to have such authority or powers exercised by the Urban Renewal Authority if one exists or is subsequently established.

"(b) No incorporated city shall exercise the authority granted by the act until after the local governing body shall have adopted a resolution finding that: (1) one or more blighted areas exist in its area of operation; and (2) the rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals, and welfare of the residents of such area.

"(c) *No incorporated city shall exercise the authority granted by this act until a majority of the qualified property taxpaying voters hereof who vote at an election to be held for that purpose shall have approved same. Laws 1961, p. 48, Section 7.*" (Emphasis supplied)

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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 239

ROY ISAACS, S. M. ROOF, LOAL C. WILSON and J. V. GARRETT,
Petitioners,

VERSUS

THE CITY OF OKLAHOMA CITY, a municipal corporation, URBAN RENEWAL AUTHORITY, GRANVILLE TOMERLIN, Chairman, F. D. MOON, Vice Chairman, C. KENNETH WOODWARD, Secretary, RUEBEN G. MARTIN, member, RALPH L. BOLEN, member, JAMES T. YIELDING, Executive Director, TULSA URBAN RENEWAL AUTHORITY, a purported public body corporate of Tulsa, Oklahoma, and its officers and members, LEEMAN NIX, Chairman, ROBERT LAIRD, Vice Chairman, MURRAY MCCUNE, member, PAUL CHAPMAN, Executive Director and Secretary, and THE CITY OF TULSA, OKLAHOMA, a municipal corporation,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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July, 1967

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 5-0080

INDEX

Statement 1

Summary 4

Reasons for Denying the Writ:

I. Petitioner's challenge of the Urban Redevelopment Law of Oklahoma, which is applicable only to cities in excess of 100,000 population, presents no substantial "due process" or "equal protection" issue 5

II. Legislative approval of subsequent acts permitting redevelopment programs in smaller cities only upon majority vote of the "qualified property tax paying voters" does not affect the validity of the earlier law 9

Conclusion 12

CITATIONS

Cases:

A. F. of L. v. American Sash Co., 335 U.S. 538 8

Berman v. Parker, 348 U.S. 26 ..... 5, 6

Brinkerhoff-Faris Trust and Savings Company v. Hill, 281 U.S. 683 11

City of Kansas City v. Robb, 183 Kan. 834, 332 P.2d 520 (1958) 10

Ferguson v. Skrupa, 372 U.S. 726 7

Flemming v. Nestor, 363 U.S. 603 7

Foeller v. Housing Authority of Portland, 198 Ore. 205, 256 P.2d 752 (1953) 8

Frazer v. Carr, Tenn., 360 S.W.2d 449 (1962) 10

INDEX CONTINUED

	PAGE
Hayes v. Missouri, 120 U.S. 68	7
Highland v. Russell Car and Snowplow Co., 279 U.S. 253	6
Katzenback v. Morgan, 384 U.S. 641	8
Krause v. Peoria Housing Authority, 370 Ill. 356, 19 N.E.2d 193 (1939)	8-9
Lawrence v. State Tax Commission, 286 U.S. 276	11
Lindsley v. Natural Carbonic Gas Company, 220 U.S. 61	11
Live Oak Water Uses' Association v. Railroad Commission of State of California, 269 U.S. 354	11
Lowden v. Oklahoma County Excise Board, 186 Okla. 706, 100 P.2d 448 (1940)	12
Luxton v. North River Bridge Co., 153 U.S. 525	6
Morey v. Doud, 354 U.S. 457	11
Old Dominion Land Company v. U. S., 269 U.S. 55	6
Packard v. Banton, 264 U.S. 140	7
Radice v. New York, 264 U.S. 292	7
Semler v. Oregon State Board of Dental Examiners, 294 U.S. 608	8
State ex rel. Fatzer v. Urban Renewal Agency of Kansas City, 179 Kan. 435, 296 P.2d 656 (1956)	9
State of Ohio ex rel. Clarke v. Deckebach, 274 U.S. 392	7
State ex rel. Porterie v. Housing Authority of New Orleans, 190 La. 710, 182 So. 725 (1938)	8
Tigner v. State of Texas, 310 U.S. 141	8
U. S. ex rel. Tennessee Valley Authority v. Welch, 327 U.S. 546	6
Williamson v. Lee Optical Co., 348 U.S. 483	7, 8

CONSTITUTIONAL PROVISIONS:

U. S. Constitution Amend. V	4

INDEX CONTINUED

PAGE

U. S. Constitution Amend. XIV ____ 4

Oklahoma Constitution Article V, §§ 32, 46, 49 ____ 11

STATUTES:

Oklahoma Urban Redevelopment Law, 11 Okla. Stat. §§ 1601-1620 (1959) ____ 1

Oklahoma Urban Redevelopment Act, 11 Okla. Stat. §§ 1651-1670 (1959) ____ 9

Oklahoma Urban Redevelopment Act of 1961, 11 Okla. Stat. §§ 1701-1718 (1961) ____ 3, 9

In the
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ROY ISAACS, S. M. ROOF, LOAL C. WILSON and J. V. GARRETT,
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VERSUS

THE CITY OF OKLAHOMA CITY, a municipal corporation, URBAN RENEWAL AUTHORITY, GRANVILLE TOMERLIN, Chairman, F. D. MOON, Vice Chairman, C. KENNETH WOODWARD, Secretary, RUEBEN G. MARTIN, member, RALPH L. BOLEN, member, JAMES T. YIELDING, Executive Director, TULSA URBAN RENEWAL AUTHORITY, a purported public body corporate of Tulsa, Oklahoma, and its officers and members, LEEMAN NIX, Chairman, ROBERT LAIRD, Vice Chairman, MURRAY McCUNE, member, PAUL CHAPMAN, Executive Director and Secretary, and THE CITY OF TULSA, OKLAHOMA, a municipal corporation,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT

Petitioners seek to obtain review of the decision of the Supreme Court of the State of Oklahoma upholding the constitutionality of the Oklahoma Urban Redevelopment Law. 11 Okla. Stat. §§ 1601-1620.

Initially, separate actions for declaratory judgments challenging the validity of the Urban Redevelopment Law

were filed in the District Courts of Oklahoma County and Tulsa County respectively. From judgments of both District Courts upholding the validity of the Urban Redevelopment Law, the cases were appealed to the Supreme Court of the State of Oklahoma. The Oklahoma Supreme Court consolidated the cases because of the similarity of issues, and subsequently affirmed the judgments of the District Courts.

The provisions of the Urban Redevelopment Law apply to all incorporated cities of Oklahoma in excess of 100,000 population. 11 Okla. Stat. § 1602. The powers conferred by this legislation may be invoked as provided in 11 Okla. Stat. § 1607, which in its entirety reads as follows:

> "Resolution by Local Governing Body: (a) No Urban Renewal Authority created by this Act shall exercise the authority or powers granted by this Act until after the local governing body shall have determined by resolution that such action is in the public interest and elects to have such authority or powers exercised by the Urban Renewal Authority if one exists or is subsequently established. (b) No incorporated city shall exercise the authority granted by this Act until after the local governing body shall have adopted a resolution finding that: (1) One or more blighted areas exist in its area of operation, and (2) The rehabilitation, conservation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals and welfare of the residents of such area."

Subsequent acts were passed by the Legislature applying to cities having populations between 10,000 and 100,000, and cities with populations under 10,000, which acts were identical to the Urban Redevelopment Law except that

an additional requirement for invoking powers under the later acts was provided, which reads as follows:

> "No incorporated city shall exercise the authority granted by this Act until a majority of the qualified property tax-paying voters thereof who vote at an election to be held for that purpose shall have approved the same." 11 Okla. Stat. § 1707.

The Urban Redevelopment Law, later codified as 11 Okla. Stat. §§ 1601 through 1620, was adopted as an emergency measure and was approved on April 7, 1959 (Session Laws, 1959, Chapter 38, pp. 61-77).

Subsequently, the Legislature enacted the Urban Redevelopment Act, later codified as 11 Okla. Stat. §§ 1651 through 1670 (Session Laws, 1959, Chapter 36, pp. 43-60), applicable to cities between 10,000 and 100,000 population. The Urban Redevelopment Act was not enacted as an emergency measure. It was approved on June 23, 1959 and did not become effective until October 1, 1959, which was ninety days after the Legislature adjourned *sine die* July 3, 1959.

The third urban renewal law, applicable to cities of 10,000 population or less, was passed some two years later and is known as the Urban Redevelopment Act of 1961. This legislation is codified as 11 Okla. Stat. §§ 1701 through 1718.

Only the Urban Redevelopment Law, applicable to cities in excess of 100,000 population and which was the first of three schemes of legislation, is challenged in this action. The subsequent legislation permitting redevelopment programs in smaller cities is not in issue.

SUMMARY

Petitioners seek review of the Oklahoma Supreme Court decision upholding the validity of the Oklahoma Urban Redevelopment Law. They assert that the Urban Redevelopment Law, which applies to cities in excess of 100,000 population, violates the "due process" and "equal protection" clauses of the Fifth and Fourteenth Amendments and contravenes the prohibition against special legislation by the Oklahoma Constitution. These contentions pose no issue warranting review by this Court.

The Urban Redevelopment Law was the first of three complete and separate statutory schemes to be enacted by the state legislature. The legislative objective of urban renewal is a sound purpose. *Berman* v. *Parker*, 348 U.S. 26. The legitimacy of the legislative purpose is not questioned by petitioners.

That the Legislature chose first to address itself to the problems of the larger cities (those of more than 100,000 population) does not pose an issue for resolution by this Court. It is clear that blight and deterioration exist in the larger cities, while it may or may not be present in smaller municipalities. Thus, neither the Legislature's determination to use the police power to attack the problems of the larger cities *first* nor its decision regarding implementation (which was entrusted to the governing bodies of the cities) lack rational justification. Consequently, there is no real issue as to the constitutionality of the Urban Redevelopment Law.

Subsequent passage of the acts permitting smaller municipalities to exercise redevelopment powers only upon

affirmative majority vote of qualified property tax-paying voters does not affect the validity of the Urban Redevelopment Law. The reasonableness of the population classification is not disturbed since these later acts are separate and complete schemes of legislation, intended to treat the possible presence of blight in the smaller towns. The validity of the two later acts is not challenged.

It follows that no real question justifying review by this Court is presented.

REASONS FOR DENYING THE WRIT

I

PETITIONERS' CHALLENGE OF THE URBAN REDEVELOPMENT LAW OF OKLAHOMA, WHICH IS APPLICABLE ONLY TO CITIES IN EXCESS OF 100,000 POPULATION, PRESENTS NO SUBSTANTIAL "DUE PROCESS" OR "EQUAL PROTECTION" ISSUE.

The sole challenge in this case is directed to the validity of the Urban Redevelopment Law of Oklahoma, which applies to cities in excess of 100,000 population. Petitioners seek, by writ of certiorari, to obtain review by this Court of issues which have been previously well considered and are long settled. A review of the pertinent cases demonstrates that significant issues of "due process" or "equal protection" asserted by the petitioners are not present, and there is, therefore, no reason for granting the writ.

It is now well settled in law that urban renewal or community redevelopment is a valid public purpose, and is, therefore, a proper legislative objective within the purview of the police power of the state. *Berman* v. *Parker*, 348 U.S. 26. In the *Berman* case, this Court applied the

general rule that when the Legislature has spoken, subject to specific constitutional limitations, public interest has been declared in terms well-nigh conclusive. In other words, when Congress or a state legislature has declared a public purpose, the decision is entitled to deference until it is shown to involve an impossibility. The Legislature is the primary guardian of the public interest and the role of the judiciary in ascertaining whether or not the police power is being exercised for a public purpose is an extremely narrow one. *U. S. ex rel. Tennessee Valley Authority* v. *Welch*, 327 U.S. 546; *Old Dominion Land Company* v. *U. S.*, 269 U.S. 55.

Here, the purpose of Oklahoma's Urban Redevelopment Law is not dissimilar from that of the urban redevelopment legislation under attack in the *Berman* case. The aim of both is to eliminate slums and blight from urban areas, and prevent future re-occurrence of these conditions. It is incontestable that the effects of these conditions place a heavy burden on the public welfare. Therefore, it is clear that the object of this legislation constitutes a valid public purpose, and as such, it is within the scope of the state's police power. Once the public purpose has been established, the means of executing the project are for the Legislature and it alone to determine. *Berman* v. *Parker, supra; Luxton* v. *North River Bridge Co.*, 153 U.S. 525; *Highland* v. *Russell Car and Snowplow Co.*, 279 U.S. 253.

There is no reasonable doubt that the determination of the Legislature to classify urban renewal programs on the basis of population is proper. The Urban Redevelopment Law, applicable to cities in excess of 100,000 popu-

lation, is challenged on the ground that this population classification violates both the due process and equal protection clauses of the Fourteenth Amendment of the Constitution. The law in this area is well-settled and free from substantial dispute. The requirements of due process interpose a bar only if the statute manifests a "patently arbitrary classification, utterly lacking in rational justification." *Flemming* v. *Nestor*, 363 U.S. 603. Further, it is only legislative classifications based on "invidious discrimination" that offend the equal protection guarantee of the Constitution. *Ferguson* v. *Skrupa*, 372 U.S. 726. Where there is any conceivable rational relationship between the legislative classification and attainment of a proper public purpose, the enactment will be sustained. *Williamson* v. *Lee Optical Co.*, 348 U.S. 483; *State of Ohio ex rel. Clarke* v. *Deckebach*, 274 U.S. 392.

This Court has long adhered to the rule that the application of a law to a locality by population classification is not invalid unless the classification is purely arbitrary, oppressive or capricious. *Radice* v. *New York*, 264 U.S. 292; *Packard* v. *Banton*, 264 U.S. 140; *Hayes* v. *Missouri*, 120 U.S. 68.

At the time of its adoption, the Oklahoma Urban Redevelopment Law, applying to cities of over 100,000 population, was the *only* state legislation relating to urban redevelopment. Thus, the sole question presented in this dispute is whether there was a reasonable basis to support the legislative determination to restrict the application of urban renewal to cities exceeding 100,000 population.

It is common knowledge that problems of slums and blight exist in heavily populated metropolitan areas,

whereas, such problems may or may not be prevalent in smaller communities. It is equally clear that it is the prerogative and responsibility of the Legislature to determine the manner and extent of eliminating social evils through reform measures. In *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, this Court stated:

> "The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same filed may be of different dimensions and proportions, requiring different remedies. Or so the Legislature may think. *Tigner* v. *State of Texas*, 310 U.S. 141. Or the reform may take one step at a time, addressing itself to the phase of the problems which seems most acute to the legislative mind. *Semler* v. *Oregon State Board of Dental Examiners*, 294 U.S. 608. The Legislature may select one phase of one field and apply a remedy there, neglecting the others. *A.F. of L.* v. *American Sash Co.*, 335 U.S. 538. . . ."

See to the same effect *Katzenbach* v. *Morgan*, 384 U.S. 641. The Oklahoma Legislature chose to first address itself to those areas of the state most acutely in need of urban redevelopment. It is submitted that this was a reasonable exercise of legislative discretion.

The petitioner has failed to cite a single instance in which the judiciary has rejected a legislatve population classification in implementing a program designed to eliminate slums or substandard housing. In fact, such population classifications have been universally sustained by the courts. See, *e.g.*, *Foeller* v. *Housing Authority of Portland*, 198 Ore. 205, 256 P.2d 752 (1953). *State ex rel. Porterie* v. *Housing Authority of New Orleans*, 190 La. 710, 182 So. 725 (1938), *Krause* v. *Peoria Housing Authority*, 370 Ill. 356,

19 N.E.2d 193 (1939). In sustaining an urban renewal act applying only to cities having a population of more than 75,000, the Kansas Supreme Court in *State ex rel. Fatzer* v. *Urban Renewal Agency of Kansas City,* 179 Kan. 435, 296 P.2d 656 (1956) stated:

> "It is a matter of common knowledge that as cities become more populous they are more subject to slum and blighted areas which are injurious to the public health, safety, morals, and welfare of the residents, and in our opinion the population of a city furnishes a legitimate ground for a classification and differentiation such as that contained in the act under consideration. . . ." 296 P.2d at page 659.

Thus, the determination of the Oklahoma Legislature to apply urban renewal initially only to cities in excess of 100,000 population represents a reasonable exercise of legislative discretion, *and does not* present a "due process" or "equal protection" issue.

II

LEGISLATIVE APPROVAL OF SUBSEQUENT ACTS PERMITTING REDEVELOPMENT PROGRAMS IN SMALLER CITIES ONLY UPON MAJORITY VOTE OF THE "QUALIFIED PROPERTY TAX PAYING VOTERS" DOES NOT AFFECT THE VALIDITY OF THE EARLIER LAW.

The petitioner also asserts that the Urban Redevelopment Law must be considered collectively with subsequent acts extending urban redevelopment to cities of smaller population. See 11 Okla. Stat. §§ 1651-1670; 11 Okla. Stat. §§ 1701-1718. This subsequent legislation was identical to the Urban Redevelopment Law except that a favorable vote of the qualified property tax-paying voters of the

smaller cities was required prior to its implementation. Since the Legislature recognized that the need to eliminate slums or congested housing may not be imperative in smaller municipalities, it included the vote provision as a logical additional requirement for invoking redevelopment powers. Consequently, the fact that smaller communities are required to vote on the desirability of invoking urban renewal powers is not unreasonable or arbitrary. *City of Kansas City* v. *Robb*, 183 Kan. 834, 332 P.2d 520 (1958), involved the resolution of an issue substantially identical to that presented herein by the petitioner. An act authorizing the issuance of general obligation bonds in support of urban renewal programs was challenged as being unconstitutional. The basis of the challenge was that an election was required prior to issuance of the bonds in cities with less than 125,000 population, but such a bond election was unnecessary, except upon a protest petition, in cities exceeding 125,000 population. In sustaining the act, the Court stated:

> ". . . Certainly, the expense and delay of holding bond elections in larger cities and the greater need and urgency for urban renewal action justifies a classification on the basis of population which, in this case, has a real and substantial relation to the purpose of the statute. It is conceivable that differences of opinion may exist in small cities as to whether slums and blighted areas are present thus making population a legitimate ground for classification and differentiation with respect to holding elections, to issue bonds, to undertake and carry out urban renewal projects. . . ." 332 P.2d at page 523.

See also *Frazer* v. *Carr*, Tenn., 360 S.W.2d 449 (1962).

The burden of showing the classification adopted by the Legislature is unconstitutional rests upon the petitioner. *Morey* v. *Doud*, 354 U.S. 457; *Lindsley* v. *Natural Carbonic Gas Company*, 220 U.S. 61; *Lawrence* v. *State Tax Commission*, 286 U.S. 276. The petitioners have totally ignored the fact that the problem of slum clearance and rehabilitation is of peculiar magnitude in large cities but may or may not be of equal concern in smaller communities. There is a real and substantial justification for the voting distinction between cities over and under 100,000 population. The Legislature is aware of the existence of slums in cities over 100,000 population and there is no logical basis for an expensive, time-consuming election, whereas in smaller cities there may be a reasonable basis for disagreement upon the need for redevelopment and the elections are not as expensive and cumbersome.

It should be observed that the petitioner also challenges the validity of the Oklahoma Urban Redevelopment Law as "special or local" legislation prohibited by Article V, §§ 32, 46, and 49 of the Oklahoma Constitution. The assertion that a state statute contravenes provisions of a state constitution does not present a federal question for review by this Court. *Brinkerhoff-Faris Trust and Savings Company* v. *Hill*, 281 U.S. 683; *Live Oak Water Uses' Association* v. *Railroad Commission of State of California*, 269 U.S. 354. In any event the test for measuring the validity of alleged "special or local" legislation under the Oklahoma Constitution is the same as that applied to test alleged discrimination under the equal protection clause of the Fourteenth Amendment of the United States Constitution. If there is any reasonable basis for the classifi-

cation, the legislation will be sustained. *Lowden* v. *Oklahoma County Excise Board*, 186 Okla. 706, 100 P.2d 448 (1940).

The Oklahoma Urban Redevelopment Law either viewed alone or considered collectively with other legislation enacted on the subject of urban redevelopment presents no Fourteenth Amendment issue for determination.

CONCLUSION

The strong rational basis for the Oklahoma Legislature's decision to attack *first* the problems of blight in the larger cities and to entrust the implementation of redevelopment powers to the governing bodies of those cities precludes any serious question of the validity of the Urban Redevelopment Law.

Respondents pray that the petition for writ of certiorari be denied.

Respectfully submitted,

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INDEX

	Page
Counterstatement	1
Reply to Respondents' Reason No. 1	3
Petitioners' challenge has been and still is to the entire statutory scheme by which individuals in cities over 100,000 were first "fenced out" from the rights of franchise in June, 1959 (11 O.S.A. 1651-1670)	
Reply to Respondents' Reason No. 2	6
The statutory scheme to discriminate between individuals, on voting rights, whether a simple-minded scheme or a sophisticated scheme requires the constitutional yardstick be applied to the scheme in its entirety; especially where the ostensible offending second and third steps in the legislative scheme are in fact re-enactments of all the material provisions of the first step or act, with the addition thereto of the franchise rights that are the subject of discrimination	
Summary	11
Conclusion	13

CITATIONS

Cases.

Carrington v. Rash, 13 L. ed. 2d 675	3, 7
Ferguson v. Skrupa, 372 U.S. 726	3
Gomillion v. Lightfoot, 364 U.S. 339, 342; 52 L. ed. 2d 110, 113; 81 S. Ct. 125	10

Page

Lane v. Wilson, 307 U.S. 268, 275; 83 L. ed. 1281, 1287; 59 S. Ct. 872 10

Loving v. Virginia, 18 L. ed. 2d 1010, 1017; June 12, 1967 ..... 3, 4

MacDougal v. Green, 335 U. S. at 288, 290; 93 L. ed. at 9, 10 10

Pope v. Williams, 193 U.S. at 632; 48 L. ed. at 822 7

Reynolds v. Sims, 12 L. ed. 2d 506 at 528; 377 U. S. 533; 84 S. Ct. 1362 10

Wesberry v. Sanders, 376 U.S. 1; 11 L. ed. 2d 481; 84 S. Ct. 526 10

Statutes

11 O.S.A. 1657(c) 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 239

ROY ISAACS, *et al., Petitioners,*

vs.

OKLAHOMA CITY, *et al., Respondents.*

REPLY BRIEF OF PETITIONERS FOR WRIT OF CERTIORARI

COUNTERSTATEMENT

Contrary to the claims made by respondents (Brief page 3, last paragraph), the challenge in this case is directed to the validity of the provisions of the statutory scheme of redevelopment law, which fences out and excludes from the right of franchise and its exercise, individuals in cities having over 100,000 population.

The challenge of infringement of the U. S. Constitution, involves the unreasonableness of, *classification by numerical population, as the sole basis for differing treatment of individuals on voting rights* concerning redevelopment. The arbitrary, numerical classifications are

contained in each of three otherwise identical enactments comprising the Oklahoma Statutory Redevelopment Law for all cities of the state.

The sole basis therein for differing treatment of individuals is the numerical classification made in the application section of the second and third enactments (actual re-enactments of the first act, with the voting provision added thereto), fencing out the right of franchise complained of. The other identical provisions of each enactment, together with the brief interval of elapsed time between enactments provides conclusive proof that all had a *single common purpose*, i. e., redevelopment, having no rational relationship to the arbitrary classification made solely to provide differing treatment in the rights, power and authority granted to segments of individuals and withheld from other segments of individuals similarly qualified.

The urban redevelopment statutory scheme applicable to all cities of Oklahoma is challenged in this action. The cause for the challenge was precipitated by the June, 1959, enactment. It first provided *differing treatment for individuals*, regarding the right of franchise, by its arbitrary population classification fencing out individuals in Tulsa and Oklahoma City from exercising the right of franchise on the same subject matter. The subsequent enactment (1961), merely repeated the numerical classification fencing out scheme, as the *sole basis for the discrimination provided therein between individuals*, otherwise equally qualified. Such differing treatment, without reasonable or valid basis, constitutes "invidious discrim-

ination," infringing the rights of petitioners under the equal protection clause and the due process clause of the 14th Amendment to the U. S. Constitution.

The "equal protection" clause requires judicial inquiry and consideration of whether the classifications drawn by any statutory scheme constitutes an arbitrary and "invidious discrimination." *Loving* v. *Virginia,* 18 L. ed. 2d 1010, 1017; June 12, 1967.

The situation presented in this case requires review on the merits, by issuance of the writ. The implied decision by the Oklahoma Supreme Court of non-infringement of the equal protection and the due process clauses of the federal Constitution involves a federal question of substance not heretofore specifically decided, but decided by said State court in a way *not in accord* with *applicable decisions of this court.*

REPLY TO RESPONDENTS' REASON NO. 1

The general purpose of urban renewal law is not challenged in this action; nor is its public purpose under attack.

It is the arbitrary numerical classification therein causing "invidious discrimination" that offends the equal protection guarantee of the Constitution, concerning individual rights of franchise, recognized in *Ferguson* v. *Skrupa,* 372 U.S. 726, but spelled out with greater clarity in *Carrington* v. *Rash,* 13 L. ed. 2d 675, that are the cause and subject of complaint herein.

We are not here concerned with legislation regulating professions or occupations, but *with legislation vio-*

lating the principles concerning *equal rights of franchise* under the 14th Amendment. The "invidious discrimination" caused by arbitrary, oppressive and capricious classifications was created with the enactment of June, 1959. It first provided the *right of franchise, limited to individuals* in cities between 10,000 and 100,000 population. It *contained all the identical provisions of the April 1959, enactment.* By *numerical exclusion in the June, 1959, act, large segments of individuals are fenced out from the right of franchise and its exercise* therein granted. Thus, we have class legislation discriminating against some persons and favoring other persons on rights of franchise, contrary to the requirements of the federal Constitution.

The "equal protection" clause requires consideration by this court of whether the classifications drawn by any statute, constitutes an arbitrary and "invidious" discrimination. The clear and central purpose of the 14th Amendment is to eliminate *all official state sources of invidious discrimination on voting rights between individuals within the state,* as much so as on the right to choose and marry regardless of race. *Loving* v. *Virginia, supra.*

This court has consistently denied the constitutionality of measures which, without any rational, reasonable or valid basis therefor, discriminate between the *voting rights of individuals* having otherwise equal qualifications. The 14th Amendment requires that the right of self determination and of voting by individuals, not be more restricted for *those in large population centers* than for

those in smaller population centers on subjects recognized by the Legislature as common to all such groups.

The central fallacy of the reasoning presented by respondents lies in their erroneous assumption (Brief page 7) that,

> "The sole question presented in this dispute is whether there was a reasonable basis to support the legislative determination to restrict the application of urban renewal to cities exceeding 100,000 population."

Such assumption would be correct but for the enactment of June, 1959, and the later enactment of 1961. With the June, 1959, enactment there was presented the central question in this dispute, and that is, *whether there was a reasonable basis to support the legislative determination to grant voting rights and impose obligations upon individuals in the cities covered by its classification* and to *exclude or fence out voting rights for the individuals in cities exceeding 100,000 population.*

Thus, the determination by the Oklahoma Legislature to apply urban renewal to *all cities in excess of 10,000 population, but only those individuals in cities under 100,000 population were given the right to vote on implementation of urban renewal, whereas individuals in cities in excess of 100,000 population were excluded and fenced out from such rights by the classification made in the June 1959, enactment,* presents an "equal protection" and "due process" issue. This legislative determination made, *constitutes an unreasonable exercise of legislative power* without any valid basis discernible for such fencing out. To the contrary, such arbitrary determination patently

reflects "invidious discrimination" in violation of the federal Constitution, requiring review by this court, to prevent the further spread and use of such legislative scheme and device herein complained of.

REPLY TO RESPONDENTS' REASON NO. 2

Heretofore we have noted that prior to June, 1959, no issue of discrimination between individuals was inherent in the April 1959, enactment, in its application to cities in excess of 100,000 population.

But an altogether different matter was presented by the June, 1959, enactment. The June, 1959, act first made obvious and presented the statutory scheme herein complained of:

(a) It re-enacted all the material detail provisions of the April, 1959, act concerning redevelopment and its purpose.

(b) It *added thereto* the *voting rights requirement* (11 O.S.A. 1657(c)); but by its *arbitrary numerical classification as the sole basis thereof* (Section 1652), *excluded the individuals in the cities having in excess of 100,000 population from having or exercising such voting rights, with no other rational basis for their exclusion* from such rights.

Thus, without the voting rights provision of the June, 1959, act, or without the arbitrary numerical classification made in the June, 1959, act, there would be no cause for the complaint herein made. There would be no dis-

crimination between individuals, having like qualifications, on the matter of the right of franchise concerning urban redevelopment.

We recognize that the privilege to vote in a state is within the jurisdiction of the state itself, to be exercised as the state may direct and upon such terms as to it may seem proper, *provided, of course, no discrimination is made between individuals in violation of the federal Constitution. Pope* v. *Williams,* 193 U.S. at 632; 48 L. ed. at 822. The foregoing principle was followed by this court in its decision and opinion in *Carrington* v. *Rash,* 13 L. ed. 2d 675, in holding unconstitutional provisions of the Texas Constitution discriminating against individuals in the military service. Therein it was vainly argued that their exclusion from voting was justified by local administrative benefits in saving additional election expenses; and also justified, in that possible political control of local affairs might be obtained by those in the military service exercising the right to vote. The same or similar arguments are advanced by respondents in the first paragraph, page 11 of their Brief. The answers to such arguments were made in the above cited case, quoted in our Petition at pages 14 and 15. There can be no real or substantial justification for voting distinctions between individuals in cities over 100,000 population and cities under 100,000 population. Such distinctions, when made in relation to voting rights, are purely *political distinctions* and *not real or substantial.* They present the same evils inherent in the differing treatment accorded individuals shown by the State Legislature reapportionment

cases recently before this court. This court in those cases refused to recognize that the individuals in large centers of population were entitled to less representation, or less voice by their vote, than in the smaller centers of population.

Contrary to respondents' claim (Brief, page 11), there is as much or more obvious basis in fact for disagreement on the need for redevelopment in cities over 100,000 population as there is basis in fact for such disagreement in cities under 100,000 population, and especially so, where the city *ages* are similar.

There is patently no legitimate overriding purpose, independent of arbitrary invidious discrimination in voting rights provided by the statutory scheme of redevelopment legislation, *which can rationally justify the arbitrary numerical classifications* made in the Oklahoma Redevelopment Statutes, *to fence out and exclude individuals in its two largest cities from the right to vote,* where such right is accorded to and required of similarly qualified individuals in smaller cities of the state for the same purposes.

The State court cases cited by respondents (Brief, page 10) discloses some factual (financial) basis for differing treatment in the objects sought to be accomplished by the legislation. The Oklahoma court, however, cites the Kansas and the Tennessee cases in its opinion, affirming the lower court, in support of its contention that the state Constitution was not violated. But the Oklahoma court in its opinion does not pretend to justify the dif-

fering treatment concerning voting rights by the classifications made in the enactments complained of (June, 1959, and 1961.) Instead, it excluded proper consideration thereof by erroneously stating (Petition Appendix page XIX):

> "The constitutionality of only one act, 11 O. S. 1961, Sections 1601-1620, is at issue here * * *."

After reciting in its opinion (Petition Appendix page XVIII:

> "Plaintiff argues that to deprive the citizens of a city with a population of 100,000 of the right to vote on such an issue is unreasonable and arbitrary and violates the equal protection of the law guaranteed by the 14th Amendment of the U. S. Constitution and the requirements of the Oklahoma Constitution that laws of a general nature shall have uniform application throughout the State."

We are thus confronted with a situation wherein a State Supreme Court (Oklahoma) compounds the usurpation of power by its state legislature by refusing to recognize that an issue for judicial inquiry and review, for infringement on the U. S. Constitution is presented by a state statute, which, in the statutory scheme of arbitrary numerical population classifications therein made, is the sole basis for differing treatment of individuals; and gives certain groups not only the right to vote, but requires their majority approval while excluding other individuals from such rights, by the numerical classification fencing out process, on identical subject matters involving otherwise equal qualifications of all such individual voters.

The denial of the rights of franchise, to the individual citizens of Oklahoma, residing in Oklahoma City and

Tulsa, for *no discernible reason other than their population exceeding 100,000* may be considered politically advantageous by politicians, but is prohibited by the clear and central purpose of the 14th Amendment.

Such statutory scheme of discrimination is odious to a free people whose institutions and rights of franchise are founded upon the doctrine of equality.

This court performs its greatest function in requiring observance by the states of the limitations and requirements of the federal Constitution, especially the equal protection and due process clauses of the 14th Amendment.

The patent discrimination disclosed by the Oklahoma statutory scheme, concerning the fundamental right of franchise, on the common subject of redevelopment law, requires review by this court on the merits of such statutory scheme.

It is immaterial that the parties here may differ on whether the legislation complained of presents a "sophisticated" or "simple-minded" mode of discrimination. The federal Constitution forbids both. *Lane* v. *Wilson*, 307 U. S. 268, 275; 83 L. ed. 1281, 1287; 59 S. Ct. 872; *Gomillion* v. *Lightfoot*, 364 U.S. 339, 342; 5 L. ed. 2d 110, 113; 81 S. Ct. 125; *Wesberry* v. *Sanders*, 376 U.S. 1; 11 L. ed. 2d 481; 84 S. Ct. 526; *Reynolds* v. *Sims*, 12 L. ed. 2d 506 at 528; 377 U. S. 533; 84 S. Ct. 1362.

The theme of the Constitution is equality among citizens in the exercise of their political rights. *MacDougall* v. *Green*, 335 U. S. at 288, 290; 93 L. ed. at 9, 10, from the opinion by Mr. Justice Douglas.

The statutory scheme, "fencing out," and excluding the individual citizens of Oklahoma's two largest cities from an *equal right to vote for or against the creation of an urban renewal authority,* granted to individuals in smaller cities, solely on the basis of arbitrary population classification, denies equality to citizens in the exercise of their fundamental political rights. The statutory scheme constitutes "invidious discrimination" prohibited by the federal Constitution, and particularly by the 14th Amendment thereto.

SUMMARY

(1) The public purpose of the Oklahoma redevelopment statutory scheme is not challenged in this case.

(2) The principal question presented is, whether there was any reasonable basis in fact, as distinguished from purely political considerations, to support the legislative determination, to grant voting rights and impose obligation upon individuals in cities having less than 100,000 population, and by arbitrary numerical classification *as the sole discernible basis therefor, to exclude and fence out all individuals similarly qualified, in cities having populations in excess of 100,000, from the right of franchise and its exercise concerning urban redevelopment.*

(3) The challenge presented involves the entire statutory scheme for *implementing and creating urban renewal authorities,* as it relates to and provides for, the inclusion of some individuals and the exclusion of other

individuals from exercise of the right of franchise granted therein.

(4) The privilege of individuals to vote is within the jurisdiction of the states, but *the states are subject to the limitations of the federal Constitution that no discrimination is made between individuals concerning the right to vote.*

(5) Political distinctions, and distinctions claimed, as saving time and expense, do not provide any reasonable or rational, *factual basis for differing treatment of fundamental rights of franchise of individuals,* in a statutory scheme covering a subject common to those included and those excluded from the right and its exercise.

(6) The equal protection clause guarantees the opportunity for equal participation by all equally qualified city voters under a statutory scheme to determine whether their city should create an urban renewal authority. The state may in its jurisdiction *withhold the right to vote on urban renewal from all individuals* or it may in its jurisdiction *grant the right to vote thereon to all individuals; but it may not grant the right to some and withhold it from others,* similarly qualified, on the sole basis of numerical population, without other discernible factual differences relating to redevelopment and urban renewal, to justify differing treatment of individuals.

(7) The insulation from federal judicial review is not carried over when the state power is used as an instrument for circumventing the federally protected right.

(8) The federal Constitution forbids sophisticated, as well as simple-minded, modes of discrimination.

(9) Any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized by this Court because the political franchise of voting is a fundamental political right, preservative of all rights.

(10) The violations of the provisions of the Oklahoma Constitution set forth in the Petition are incidental to the more serious contentions of violation of equal protection and due process under the federal Constitution, relevant to the merits herein complained of.

(11) Arbitrary numerical classification, as the sole basis for voting rights being granted to some individuals and withheld from other individuals otherwise equally qualified, is an inherently unreasonable basis for differing treatment of individual citizens by a state in a statutory scheme for urban redevelopment, and constitutes invidious discrimination requiring review on the merits by the U. S. Supreme Court.

CONCLUSION

The Petition for Certiorari complies with the Rules of this Court.

It presents a federal question of substance not heretofore specifically decided by this Court. It was decided by the Oklahoma Supreme Court in a way that is not in accord with the applicable decisions of this Court.

The petitioners are entitled to have certiorari issue for review of the Oklahoma Supreme Court decision on

the merits. Such decision should be reversed and the arbitrary statutory numerical classifications made to include some individuals and to exclude other individuals, on rights of franchise provided therein, as the sole basis for differing treatment, on the subject matter of urban renewal and redevelopment for both the included and excluded individuals patently constitutes invidious discrimination violative of the equal protection and due process requirements of the federal Constitution and requires the closest scrutiny by this Court on the merits.

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August, 1967.